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January 19, 2011

(Via fax and U.S. Mail)

Honorable William Jay Riley
Chief Judge
United States Court of Appeals for the Eighth
Circuit
Roman L. Hruska Courthouse
111 South 18th Plaza - Suite 4303
Omaha, NE 68102-1322

(Via ECF)

Honorable Patrick J. Schiltz
U.S. District Court Judge
United States Courthouse, Suite 14E
300 South Fourth Street
Mpls., MN 55415

Re: *Audrey Britton, et al v. Mark Ritchie, Secretary of State of Minnesota, et al.*
Court File No. 11-cv-93 PJS/AJB

Dear Chief Judge Riley and Judge Schiltz:

Yesterday I received Mr. Weinblatt's letter of January 14, 2011, which requests the appointment of a three-judge panel to hear and determine the above-referenced matter. The Complaint alleges that the current Minnesota congressional districts, as well as the Minnesota state House and Senate districts, are unconstitutional and their use should be enjoined. The Complaint further requests that the Court retain jurisdiction of this action.

Mr. Weinblatt requested in his letter that Judge Schiltz "immediately notify the Chief Judge of the Eighth Circuit Court of Appeals of this case and of [Mr. Weinblatt's] Request so that the Chief Judge may appoint a Three Judge court to hear and determine the case." By letter dated January 18, 2011, which I became aware of today, Judge Schiltz notified Chief Judge Riley of Mr. Weinblatt's request. I am responding to Mr. Weinblatt's letter on behalf of Defendant Ritchie, the Minnesota Secretary of State.

Mr. Weinblatt's Request is premature and does not present the federal court with a justiciable case or controversy. The claims set forth in the Complaint are not ripe for decision by the federal court. *See Growe v. Emison*, 507 U.S. 25, 113 S. Ct. 1075 (1993) (concluding that state legislature and state court should first have opportunity to redistrict); *see also Maryland Citizens for a Representative General Assembly v. Governor of Maryland*, 429 F.2d 606, 609-612 (4th Cir. 1970) (dismissing complaint for declaratory and injunctive relief regarding reapportionment of Maryland State districts because State of Maryland had not yet had adequate opportunity to act on redistricting plan).

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Accordingly, Defendant Ritchie's position is that the Complaint should be dismissed. A federal district court judge has the authority to dismiss such a complaint if the complaint does not present a justiciable controversy. *See id.* at 611 (affirming dismissal by an individual district court judge of a complaint seeking reapportionment and stating "[i]f it appears to a single district judge . . . that the complaint does not state a substantial federal claim for injunctive relief, he need not request the convening of a three-judge court. Insubstantiality of the claim may appear because of absence of federal jurisdiction . . ."). (footnotes omitted).

I request that Chief Judge Riley not appoint a three-judge panel at this time and refer the matter back to Judge Schiltz so that Defendant Ritchie can expeditiously make a motion to dismiss the Complaint.

Thank you for your consideration of this request.

Very truly yours,

ALAN I. GILBERT
Solicitor General

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cc: Clerk, United States District Court (via ECF)
U.S. Magistrate Judge Arthur J. Boyle (via ECF)
Alan Weinblatt (via ECF)
Michael O. Freeman, Hennepin County Attorney (via U.S. Mail)
Paul Beaumaster, Rice County Attorney (via U.S. Mail)
Patrick Ciliberto, Scott County Attorney (via U.S. Mail)
Tom Kelly, Wright County Attorney (via U.S. Mail)

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